AMO REPORTS 82-13

RESPONSE TO BILL 138 - AN ACT RESPECTING THE PROTECTION OF THE HEALTH OF THE PUBLIC

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

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* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
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To the Municipal Clerk:

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BILL 138 - AN ACT RESPECTING THE PROTECTION OF THE HEALTH OF THE PUBLIC

1. BACKGROUND

In November, 1980, the Ministry of Health issued a discussion paper on the proposed Health Protection Act entitled Directions in Public Health. The existing Public Health Act was approximately 100 years old, and although it had been amended from time to time it had remained essentially unchanged for many years. The Ministry decided to review the existing Public Health Act in order to respond to changes that had taken place within the health care system. In response to the changing needs of the public, the Ministry explained that its new policies were designed to reflect the objective of shifting emphasis away from acute institutional services by developing health care delivery strategies focussed on disease prevention and other similar programs based in the community.

The Draft Health Protection Act was available in July, 1981, and the Association of Counties and Regions of Ontario prepared a response which was endorsed by the ACRO Board of Directors on September 25, 1981, and by AMO on October 2, 1981. This response was further endorsed by the Municipal Liaison Committee on October 9, 1981.

AMO would like to thank the Ministry for accommodating some of the Association's concerns in Bill 138. For example, the Association previously expressed the concern that all appointees to the board of health should be paid the same remuneration and expenses regardless of who appointed them, and that remuneration and policies regarding expenses should be set by the board of health. AMO is pleased that this recommenuation is incorporated in section 47(6) of the Bill. AMO also appreciates the inclusion of section 47(7) which provides for the term of office of a municipal member of council of a board of health to continue during the pleasure of the council that appointed the municipal member. In addition, AMO supports the amendments in section 48 regarding agreements with the council of the band on a reserve, section 50(4) regarding board of health acquisition and holding of real property, and section 70 regarding municipalities' access to information, which also accommodate the Association's previous concerns.

Finally, AMO appreciates the opportunity to address the Ministry of Health once again on the Health Protection Act as a number of unresolved issues still remain. Municipalities are concerned with the erosion of local autonomy and with the financial implications of the Health Protection Act. In addition, AMO reiterates its former position that permissive legislation should be introduced in the proposed legislation to allow committees of council to assume the responsibilities of boards of health.[1]

2. PURPOSE

Section 2 states:

> "The purpose of this Act is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the protection of the health of the people of Ontario."

AMO supports the purpose of the Health Protection Act as set out therein of providing for the organization and delivery of public health programs and services, the prevention of the spread of disease, and the protection of the health of the people of Ontario. It was time the health care system in Ontario was reviewed. The Association supports generally the principle of core programs; however, it believes that more emphasis could have been placed on health promotion.

3. LOCAL AUTONOMY

a) General

There is general concern among municipalities for the gradual erosion of local board autonomy in carrying out local responsibilities, including the management of health units.

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[1] It should be noted in this report that references to boards of health assume that they have not been replaced by committees of council.

i) Mandatory health programs and services

Section 5 states:

"Every board of health shall provide or ensure the provision of health programs and services in the following areas:

(1) Community sanitation, to ensure the maintenance of sanitary conditions and the prevention or elimination of health hazards.

(2) Control of communicable diseases, including provision of immunization services to children and adults.

(3) Preventive dentistry, including provision of preventive dental services to persons residing in the health unit and provision of dental health education, oral hygiene and fluoride therapy programs to school children.

(4) Family health, including,

i) provision of counselling services,

ii) establishment of family planning services,

iii) programs to identify pregnant women who are in high-risk health categories,

iv) provision of health services to infants, pregnant women in high-risk health categories and the elderly,

v) provision of preschool and school health services,

vi) collection and analysis of epidemiological data.

(5) Home care services that are insured services under the Health Insurance Act, including services to the acutely ill and the chronically ill.

(6) Nutrition, including provision of consulting and educational services and identification of nutrition services needed by persons residing in the health unit served by the board of health.

(7) Public health education, including education in the prevention and control of life-style diseases.

(8) Such additional health programs and services as are prescribed by the regulations.

AMO concurs with the list of mandatory health programs and services as outlined in section 5. However, AMO recommends that subsection 8 be deleted until such time as municipalities have acted under the other mandatory health programs and services and until the Ministry clarifies its intentions.

ii) Guidelines

Section 7(1) states:

> "The Minister may publish guidelines for the provision of mandatory health programs and services and every board of health shall comply with the published guidelines."

Although AMO concurs with the list of mandatory health programs and services, AMO recommends that the level at which these services and programs are delivered should be determined by each board of health to meet the needs and priorities identified in each health unit.

The Ministry's plan to introduce minimum service levels for all boards of health has not been supported in municipalities where budgetary increases to introduce the core programs have been estimated and considered to be excessive. On the other hand, many boards of health are currently exceeding the minimum service levels required in the mandatory health programs and services. While it is a laudable goal to attempt to equalize levels of health programs and services across the Province, the goal should be achieved with the co-operation and support of the municipalities which contribute to the funding of the programs.

AMO does not support the publication of guidelines with which boards of health shall comply. Such guidelines should be issued by the Minister for use by boards of health in designing their programs and service levels. All boards of health should be encouraged to offer service levels contained in the guidelines, but there should be flexibility to meet the perceived needs and priorities of each health unit and its board. In addition, if guidelines are to be mandatory, AMO seeks clarification on the status of guidelines and information as to the process of their enactment. If these guidelines are in effect the same as regulations, they should be called regulations.

The Ministry might consider an approach whereby municipalities, boards of health and the Ministry would participate in the design and approval of health service plans. This would give municipalities and boards of health the opportunity to plan for local needs and priorities, and would give the Ministry (through incentive funding) a means of facilitating minimum service levels by negotiating service plans which will eventually eliminate the variations in service levels across the Province.

AMO recommends that Section 7(1) be amended to read:

> "The Minister may publish guidelines containing recommended health programs and services and every board of health shall have regard to the published guidelines in designing its health programs and services."

iii) Extent of programs and services

Section 8 states:

> "A board of health is not required by this Part to provide or ensure the provision of a mandatory health program or service referred to in this part except to the extent and under the conditions prescribed in the regulations and the guidelines."

AMO recommends that the words "and the guidelines" be deleted.

b) Boards of Health

i) General

Section 46 states:

> "There shall be a board of health for each health unit."

AMO supports the position that municipal corporation(s) should be able to assume the powers, rights and duties of the board of health, and therefore recommends that permissive legislation be included in the new Health Protection Act to allow committees of council to replace boards of health.

ii) Composition of Boards of Health

Section 47(2) states:

> "There should be not fewer than three and not more than thirteen municipal members of each board of health."

Section 47(3) states:

> "The Lieutenant Governor in Council may appoint one or more persons as members of a board of health, but the number of members so appointed shall be less than the number of municipal members of the board of health."

AMO appreciates that these subsections allow municipalities to have a majority on the board of health; however, AMO supports the position that all members of the board of health should be appointed by and be members of the council(s) of the municipality(ies) comprising the health unit. All members of the board should be accountable to an electorate, and the size of the board of health should be at the discretion of the appointing municipal councils.

AMO recommends that section 47(3) be amended to read as follows:

> "At the request of municipal council the Lieutenant Governor in Council may appoint one or more persons as members of the board of health, but the number of members so appointed shall be less that the number of municipal members of the board of health."

iii) Vacancies on Boards of Health

Section 49(2) states:

> "Where a vacancy occurs in a board of health by death, disqualification, resignation or removal of a member, the person or body that appointed the member shall appoint a person forthwith to fill the vacancy for the remainder of the term of the member."

AMO recommends that provision be made for a municipal council to replace an appointee to the board of health if the appointee fails to comply with the provision of the Municipal Act with respect to attendance at meetings.

c) By-Laws

Section 54 states:

> "A board of health shall pass by-laws respecting,
>
> a) the management of its property;
>
> b) banking and finance;
>
> c) the calling of and proceedings at meetings; and
>
> d) the appointment of an auditor."

The corresponding section in the Public Health Act, R.S.O., 1980 provides in Section 41(6) as follows:

"A separated local board may pass by-laws respecting,

a) the management of its property;

b) banking and finance;

c) the holding and conducting of meetings;

d) the appointment, duties and removal of officers and employees, and their remuneration, pensions and other benefits; and

e) any matter necessary or advisable for the management of the affairs of the board."

The proposed change reduces the autonomy of the local boards of health and restricts them in their mandate of managing their affairs relative to local needs and considerations. If the boards of health are to be given the responsibility to carry out certain programs and services, they must be given the authority to do so.

AMO recommends that Section 54 be amended to add the following:

e) the appointment, duties and removal of officers and employees, their remuneration, pensions, and other benefits; and

f) any matter necessary or advisable for the management of the affairs of the board.

d) Annual Financial Statements

Section 57(2) states:

"A board of health shall cause to be prepared statements of its financial affairs in each year including but not limited to,

a) an annual statement of income and expenses;

b) an annual statement of assets and liabilities; and

c) an annual estimate of expenses for the next year."

AMO recommends that the following subsection be added:

"A board of health shall be given the authority to adopt an annual budget subject to the approval of participating municipal councils."

e) Eligibility for appointment as a medical officer of health (M.O.H.)

Section 61 states:

"No person is eligible for appointment as a medical officer of health or an associate medical officer of health unless,

a) he is a physician,

b) he possesses the qualifications and requirements prescribed by the regulations for the position; and

c) the Minister approves the proposed appointment."

If the qualifications of a M.O.H. are prescribed by regulation, there is no need for the Minister to approve the appointment of the M.O.H. following appointment by a board of health or council, as required by subsection (c).

AMO therefore recommends that subsection (c) be deleted.

f) Retirement of a medical officer of health

Section 62(1) states:

"Every medical officer of health and every associate medical officer of health of a board of health shall retire at the end of the month in which he attains the age of sixty-five years."

Section 62(2) states:

> "A board of health, with the approval of the Minister, may reappoint the medical officer of health or associate medical officer of health, as the case may be, for a period not exceeding one year at a time until the end of the month in which the medical officer of health or associate medical officer of health attains the age of seventy years."

AMO recommends that Section 62, subsections (1) and (2) be deleted. These matters should be covered in the procedures adopted by each board of health or municipal corporation. AMO also questions the legality of this section in view of the Canadian Charter of Rights and Freedoms.

g) Dismissal of a medical officer of health

Section 63(1) states:

> "A decision by a board of health to dismiss a medical officer of health or an associate medical officer of health from office is not effective unless,
>
> a) the decision is carried by the vote of two-thirds of the members of the board; and
>
> b) the Minister consents in writing to the dismissal."

Section 63(2) states:

> "A board of health shall not vote on the dismissal of a medical officer of health unless the board has given to the medical officer of health,
>
> a) reasonable written notice of the time, place and purpose of the meeting at which the dismissal is to be considered;
>
> b) a written statement of the reason for the proposal to dismiss the medical officer of health; and

c) an opportunity to attend and to make representations to the board at the meeting."

Section 99(2) of the Municipal Act provides that "No chief administrative officer, clerk, treasurer or engineer shall be dismissed from office except after a hearing by the council or a committee of the whole council if requested by the officer concerned".

AMO recommends that this procedure be adopted for the dismissal of a medical officer of health. The hearing would be by the board of health where one existed and by the council where the responsibility of a board of health has been assumed by council. In addition, AMO recommends that the Minister's consent not be required for such dismissal.

h) Responsibilities of a medical officer of health

Section 64(1) states:

"The medical officer of health of a board of health is the executive officer of the board."

Section 64(2) states:

"The employees of and the persons whose services are engaged by a board of health are subject to the direction of and are responsible to the medical officer of health of the board."

Section 64(3) states:

"The medical officer of health of a board of health is responsible to the board of health for the management and administraion of the health programs and services and business affairs of the board."

Section 64(4) states:

"The authority of the medical officer of health of a board of health under this Act and the regulations is limited to the health unit served by the board of health."

Under Section 72(1) of the Municipal Act R.S.O., 1980, the head of council is the chief executive officer of a municipality. By analogy, AMO supports the view that the chairman of the board of health should be the chief executive officer of the board of health. In addition, each board of health should be able to appoint a chief administrative officer who may not necessarily be the medical officer of health. The medical officer of health should be subject to the direction of the board of health, this Act and the Regulations.

If boards of health are being given the legal responsibility to ensure legislated health programs are provided in the community, the board of health must have the freedom to address the organization and management structure, including assignment of all duties, responsibilities and reporting relationships of all employees to best maximize the delivery of programs to the citizens it serves. The affairs of the board of health should be handled by individuals trained and experienced in administration, finance and management. The M.O.H. should be free from the day to day operation but should have the authority and responsibility for administering the health programs.

AMO recommends that Section 64 be amended to read:

> "The medical officer of health of a board of health shall be an officer of the board of health, and subject to the direction of the board, is responsible for the carrying out of the health programs and services as required by the board of health, this act and the Regulations."

i) Attendance at meetings of boards

Section 67 states:

> "The medical officer of health of a board of health is entitled to notice of and to attend each meeting of the board and every committee of the board, but the board may require the medical officer of health to withdraw from any part of a meeting at which the board or a committee of the board intends to consider a matter related to the remuneration or the performance of the duties of the medical officer of health."

AMO recommends that this section be deleted. Such a provision should be set out in the by-laws of each board of health.

j) Employees of the board of health

(i) Staff

Section 68(1) states:

> "Every board of health shall engage the services of such persons, including public health nurses, as are considered necessary to carry out the functions of the board of health, including the duties of the board of health in respect of mandatory health programs and services."

AMO recommends that this subsection be amended to read:

> "Every board of health shall engage the services of such persons as are considered necessary by the board to carry out the functions of the board of health."

(ii) Qualifications

Section 68(2) states:

> "No board of health shall engage the services of any person in a professional, administrative or technical classification unless the person meets the qualifications and requirements prescribed by the regulations for the classification."

AMO supports the need for prescribed qualifications for professional or technical employees of the board of health but points out that in some parts of the Province it is sometimes difficult to find individuals with the prescribed qualifications currently in regulations.

AMO recommends that the qualifications be set out in permissive guidelines rather than in regulations to take into account variations in the work force across the Province.

k) Expenses and Municipal Authority

Section 69(1) states:

> "The expenses incurred by or on behalf of a board of health in the performance of the functions and duties of the board of health and the medical officer of health of the board of health under this and any other Act shall be borne and paid by the municipalities in the health unit served by the board of health in such proportion as is agreed upon or, in default of agreement, in such proportion as is prescribed by the regulations."

Section 69(2) states:

> "The council of a municipality in a health unit has all the powers necessary to enter into and to carry out an agreement in respect of payment of the expenses of the board of health of the health unit or, in default of agreement, to pay the amount that is the responsibility of the municipality in accordance with the proportions prescribed by the regulations."

AMO seeks clarification of both these subsections.

With respect to the payment of expenses of the board of health by municipalities, AMO requests that provision be made for submission and approval of board of health budgets by participating municipal councils prior to their finalization.

l) Financial inspectors

Section 71(1) states:

> "The Minister may direct in writing financial inspectors appointed by the Minister to inspect, examine and audit books, accounts, reports and records maintained by or for boards of health and to report to the Minister with such information, in the form and manner and at the time or within the period of time specified by the Minister."

AMO requests that this subsection be amended so that a municipality in a health unit shall have the same powers as the Ministry under this subsection.

m) The Chief Medical Officer of Health

(i) Appointment

Section 78(1) states:

> "The Minister shall appoint in writing an employee of the Ministry as Chief Medical Officer of Health."

AMO is concerned generally with the potential impact on local autonomy through the office of the chief medical officer of health with monitoring the management or administration of the affairs of the boards of health as set out in Sections 72, 82, and 83.

Pursuant to these sections, under directions from the Minister, the chief medical officer of health can assume the duties of the board of health and of the medical officer of health and give direction to administrative and professional staff of the board of health if, in the opinion of the Minister, the management and administration of the board of health are inadequate. Any expenses incurred in carrying out a direction by the chief medical officer of health may be treated by the Minister either as debt due by the board of health or as debt due by the corporations in the health unit.

Since this new position of chief medical officer of health will have such wide powers, AMO recommends that an appeal procedure to the Health Protection Appeal Board be established for a board of health or municipality to review decisions with respect to any expenditures incurred by this officer regarding the administration, management and provision of health services on behalf of the board of health or municipality.

(ii) Authority

Section 79(1) states:

> "The Chief Medical Officer of Health has the right to examine all by-laws, minutes and records of a board of health."

Section 79(2) states:

> "A board of health shall provide the Chief Medical Officer of Health with a copy of any by-law, minute, or record requested by the Chief Medical Officer of Health."

Section 79(3) states:

> "The Chief Medical Officer of Health may delegate in writing his authority under subsections (1) and (2) to any person."

AMO recommends that this section be amended so that the clerk of a municipality in a health unit, upon authorization by council, shall have the same authority as is granted the chief medical officer of health under this section, except with regard to medical records.

n) Regulations

Section 93(5)(d) states:

> "The Lieutenant Governor in Council may make regulations ... specifying for each board of health:
>
> i) the number of municipal members of the board,
>
> ii) by whom each of the municipal members of the board shall be appointed.
>
> iii) the area or place that each municipal member of the board is to represent.
>
> iv) the qualifications for appointment for each municipal member of the board."

AMO recommends that municipal councils have the authority to determine numbers and qualifications of members of the board of health.

4. FINANCIAL IMPLICATIONS

a) General

AMO is concerned about the financial implications of the health programs and services required by regulations or guidelines published by the Minister in this time of inflation, financial restraint, and current messages coming from the Federal Government which indicate that a reduction of grants will be paid to Provinces, particularly in the health and social services field.

There is a great deal of uncertainty surrounding the funding of the core programs, and for some boards, the introduction of the core programs will cause significant budget increases. There is virtually no information regarding the costs of implementing phases 2, 3, 4, and 5 at the levels to be set out in the "guidelines" or regulations and it is precisely the legislation of the levels of service as set out in Section 7 that has municipalities most concerned about potential financial implicatons. This has caused many municipalities to react negatively to the new legislation and municipalities have voiced support for 100% Ministry funding of minimum standard levels of service. The Ministry of Health has not answered these funding concerns notwithstanding requests by municipalities when the draft legislation was initially introduced in July of 1981. In addition, other municipalities are concerned about funding implications for non-core programs that are needed by a community.

AMO recommends that some assurance shall be obtained from the Provincial Government that due consideration of the financial implications on local municipalities will be given <u>prior</u> to the introduction of programs and services by regulations and guidelines published by the Minister.

AMO further recommends provincial/municipal consultation <u>prior</u> to the introduction of programs and services by either regulations or guidelines published by the Minister.

b) Optional health programs and services

Section 9 states:

> "A board of health may provide any other health program or service in any area in the health unit served by the board of health if,
>
> a) the board of health is of the opinion that the health program or service is necessary or desirable, having regard to the needs of persons in the area; and
>
> b) the councils of the municipalities in the area approve of the provision of the health program or service."

AMO requests clarification regarding the funding of these optional programs and points out that a distinction may be necessary between circumstances where boards of health presently offer programs that exceed the levels proposed in the core programs and circumstances where boards of health wish to offer additional programs or higher service levels in the future.

AMO recommends that, where boards of health currently offer programs and services that exceed the proposed requirements of the Health Protection Act, existing funding arrangements be maintained.

c) Recovery of expenses

Section 13 states:

> "The expenses incurred by a board of health in respect of a health hazard in, on or of any premises may be recovered from the owner or the occupier, or both, of the premises, with costs, by the board of health by action in a court of competent jurisdiction."

AMO recommends that the provision for collection as set out in section 128 of the Public Health Act, R.S.O., 1980 be used.[2] The sums being collected could be very substantial.

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[2] Section 128 is printed in Appendix A.

d) Persons in need of assistance

Section 32 states:

> "Where a medical officer of health is of the opinion, upon reasonable and probable grounds, that a person residing in the health unit served by the medical officer of health shows a lack of competence to care for himself and that serious physical impairment of the person is imminent, the medical officer of health may provide or arrange for the attendance of physicians and public health nurses, medicine and other assistance and necessaries for the person."

AMO concurs with this provision, but points out that it could have great financial consequences for municipalities. AMO hopes the emphasis will be placed on "arranging" instead of "providing" assistance and that such assistance will be arranged through established agencies such as social services agencies.

5. MISCELLANEOUS COMMENTS

a) Interpretation

(i) boards of health

Throughout Bill 138, the terms "regional municipality" and "regional corporation" and "local boards of health" and "boards of health" are used. AMO seeks clarification of these terms.

ii) health hazard

Section 1(1)9 states:

> "health hazard" means,
>
> i) a condition of a premises
>
> ii) a substance, thing, plant or animal other than man, or
>
> iii) a solid, liquid, gas or combination of any of them,

that has or that is likely to have an adverse effect on the health of any person."

This definition of health hazard has too broad an application. By using the standard "that has or that is likely to have an adverse effect on the health of any person", almost anything could be a health hazard depending on the sensitivity of one particular individual.

AMO recommends that this subsection be amended to read:

"health hazard" means,

i) a condition of a premises,

ii) a substance, thing, plant or animal other than man, or

iii) a solid, liquid, gas or combination of any of them,

that has or that is likely to have an adverse effect on the health of the general public."

iii) public health inspector

Section 1(1) 22 states:

"public health inspector" means a public health inspector of a board of health."

AMO is concerned that this subsection does not take into account situations where a public health inspector is not an employee of a board of health but is an employee of a municipal corporation, such as the City of Toronto.

AMO recommends that this subsection be amended to read:

"public health inspector" means a person so designated as defined in the regulations."

b) School pupils

Section 6(1) states:

> "Every board of health shall provide such of the health programs and services as are prescribed by the regulations for the purposes of this section to the pupils attending schools within the health unit served by the board of health."

Section 6(2) states:

> "Subsection (1) does not apply in respect of pupils attending a school unless the person or organization that operates the school has agreed to the provision of the particular health program or service to the pupils attending the school."

Section 6(3) states:

> "Subsection (1) applies only in respect of the classifications of pupils prescribed by the regulations in respect of a health program or service."

Section 6(4) states:

> "Where a board of health is required by this Act or the regulations to provide or ensure the provision of a health program or service, no person or organization that operates a school in the health unit served by the board of health shall provide or ensure the provision of the health program or service to a pupil in the school without the approval of the medical officer of health for the health unit."

AMO seeks clarification as to what is meant by section 6. In particular, AMO questions if this section means that the authority of the medical officer of health supercedes the authority of the board of education.

c) Guidelines

Section 7(2) states:

> "Guidelines shall be transmitted to each board of health and shall be available for public inspection in the Ministry."

AMO recommends that the words "in the ministry" be deleted.

d) Facilities required in residential buildings

Section 18 states:

> "Every person who owns a residential building shall provide in the residential building,
>
> a) potable water; and
>
> b) sanitary facilities,
>
> for the occupants of the residential building."

AMO seeks clarification regarding the intent and enforcement of this section.

e) Grants

Section 73 states:

> "The Minister may pay grants;
>
> a) to boards of health;
>
> b) to persons or organizations prescribed by the regulations,
>
> for the purpose of this Act or for such purpose as is prescribed by the regulations."

AMO seeks clarification of whether this section is providing funding for boards of health or is dealing with "special" funds (grants).

f) Merger of health units

Section 74(1) states:

> "Where two or more health units are merged, the boards of health of the merged health units are dissolved."

Section 74(2) states:

> "Where two or more health units are merged, the assets owned by or under the management and control, as the case may be, and the liabilities of the boards of health of the merged health units are, without compensation, assets owned by or under the management and control and liabilities of the board of health of the new health unit."

Section 74(3) states:

> "Where the boundaries of health units are altered so that an area formerly in one health unit is included in another health unit, the assets owned by or under the management and control and the liabilities of the board of health of the health unit of which the area was formerly a part and that relate to the area are, without compensation, assets owned by or under the management and control, as the case may be, and liabilities of the board of health of the health unit in which the area is included."

Section 74(4) states:

> "Where the boards of health are unable to agree on a matter under subsection (3), the Minister may make an order determining the matter."

Similar provisions should be included for division of a health unit into more than one health unit.

SUMMARY OF RECOMMENDATIONS

1. That no additional programs be prescribed by regulations until such time as municipalities have acted under the other mandatory health programs and services and until the Ministry clarifies its intentions.

2. That the level at which the mandatory health programs and services are delivered be determined by each board of health, and a board of health shall have regard to published guidelines in designing its health programs and services. If guidelines are to remain mandatory, they should be called regulations.

3. That permissive legislation be included in the Health Protection Act to allow committees of council (or joint committees of more than one council where appropriate)to replace boards of health.

4. That boards of health be given sufficient authority to enable them to carry out their mandate of managing their affairs relative to local needs and considerations. More specifically, AMO recommends that boards of health be given the additional authority to pass by-laws regarding officers and employees of boards of health and any other matter necessary or advisable for the management of the affairs of the board, and that boards of health be given the additional authority to adopt an annual budget subject to the approval of the participating municipal councils.

5. That the medical officer of health of a board of health be an officer of the board of health, and subject to the direction of the board, be responsible for the carrying out of the health programs and services as required by the board of health, this act and the Regulations. Ministerial approval of the appointment of the medical officer of health should not be required. Provision regarding retirement of the medical officer of health should not be legislated, and the dismissal of a medical officer of health should be governed by a procedure similar to that set out in Section 99(2) of the Municipal Act.

6. That boards of health be given discretion regarding the employment of staff.

7. That provision be made for submission and approval of board of health budgets by participating municipal councils prior to their finalization.

8. That an appeal procedure to the Health Protection Appeal Board be established for a board of health or municipality to review decisions with respect to any expenditures incurred by the chief medical officer of health regarding the administration, management and provision of health services on behalf of a board of health or municipality.

9. That municipal councils be given the authority to determine numbers and qualifications of members of the board of health.

10. That the Provincial Government respond to municipalities' concerns and questions regarding funding and that the minimum standard levels of service be 100% funded by the Province. In addition, AMO recommends that the Provincial Government assure municipalities that due consideration of the financial implications of the Health Protection Act and core programs will be given prior to the introduction of programs and services by regulations and guidelines published by the Minister and that the Provincial Government will consult with municipalities prior to introducing programs or services by either regulations or guidelines published by the Minister. AMO further recommends that the Ministry provide a five year projection of costs for municipalities and the Province.

11. That the collection procedures as set out in Section 128 of the Public Health Act, R.S.O. 1980 be provided for the collection of expenses incurred by a board of health in respect of a health hazard in, on or of any premises from an owner, occupier, or both of the premises.

APPENDIX A - SECTION 128 of the Public Health Act

128.—(1) Where the owner or occupier of any premises in which a nuisance exists fails, after due notice, to abate it, the medical officer of health or public health inspector may enter the premises and take such steps as may be necessary to abate it. Where owner or occupier neglects to abate

(2) All reasonable costs and expenses incurred in abating a nuisance shall be deemed to be money paid for the use and at the request of the person by whose act, default or sufferance the nuisance was caused, and are recoverable from both the owner and the occupier for the time being of the premises. Recovery of expenses

(3) If the costs and expenses incurred in abating the nuisance are not paid by the owner or occupier within one month after a demand of payment, a statement of the amount of the costs and expenses and of the person by whom and the premises in respect of which they are payable shall be delivered to the clerk of the municipality who shall insert the amount in the collector's roll, and may be collected in like manner as municipal taxes. Collection of expenses as taxes

(4) The occupier for the time being of the premises may deduct any money recovered or collected from him that, as between him and the owner, the latter ought to pay out of the rent then due or from time to time becoming due in respect of the premises. Occupier's right to deduct payment from rent

(5) An occupier shall not be required to pay any further sum than the amount of rent for the time being due from him or that, after demand of such costs or expenses and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by the occupier unless he refuses truly to disclose the amount of his rent and the name and address of the person to whom it is payable, and the burden of proof that the sum demanded from the occupier is greater than the rent due by him at the time of such notice, or that has since accrued, is on the occupier.. R.S.O. 1970, c. 377, s. 95. Limit of amount recoverable from occupier

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